IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.430/2006

Reserved on: 4.10.2007

Decided on. 24.10.2007

Janak Raj **…Petitioner.**

Versus

HRTC and others. **Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. No.

For the petitioner : Mr. Ajay Sharma Advocate.

For the respondents Mr. H.S. Rawat, Advocate for respondents No.1 and 2.

Rajiv Sharma, J.

A challenge has been made to the award passed by the Presiding Judge, H.P. Labour Court-cum-Industrial Tribunal, Shimla dated 10.3.2006.

The State Government has made the following reference to the H.P. Labour Court, Shimla

> **"1. Whether the termination of services of Sh. Janak Raj, Ex-conductor by (1) Regional Manager, Himachal Road Transport Corporation, Rampur Bushehar, District Sharma, Himachal Pradesh and (2) Managing Director, Himachal Road Transport Corporation, Shimla w.e.f. 18.1.1995 on the grounds of issuing short tickets to the passengers without affording the reasonable opportunity of his defence/being heard in person in consonance with the principles of natural justice, is legal and justified and whether the above penalty imposed upon the worker attracts the provisions of section 11-A of the Industrial**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

Disputes Act, 1947 being disproportionate to the alleged offence. What is the effect and to what relief of service benefits including re-instatement, back wages, seniority and amount of compensation, Sh. Janak Raj is entitled?

2. Whether the enquiry conducted by the management against the worker is vitiated, as alleged. If so, to what effect?"

In sequel to the reference made by the State Government, the petitioner (hereinafter referred to as the workman for convenience sake) had filed his statement of claim before the Labour Court. The employer had filed the reply to the statement of claim filed by the workman. The workman had filed replication to the reply filed by the employer to the statement of claim. The Labour Court had answered the reference in negative on 10.3.2006.

The brief facts which can be culled out from the pleadings of the parties are that a charge-sheet was served upon the workman vide memorandum dated 7.7.1990. Four charges were levelled against the workman. Consequently the inquiry was entrusted to the Inquiry Officer. The Inquiry Officer submitted his inquiry report in the year 1992 to the Regional Manager Rampur Unit. The Regional Manager Rampur Unit had issued show cause notice to the workman for his removal from service vide memorandum dated 18.10.1993. The workman had submitted his reply to the show cause notice. The penalty of removal was imposed upon the workman vide office order dated 18.1.1995. He preferred an appeal before the Divisional Manager, HRTC, Shimla against his removal. The Divisional Manager rejected the appeal on 22.4.1995. The workman had invoked the provisions of the Industrial Disputes Act, 1947 and consequently the matter was referred by the State Government to the Labour Court by way of reference No. 113 of 1999.

Mr. Ajay Sharma, Advocate had strenuously argued that the award passed by the Labour Court is perverse since out of three RWs produced

before it, the Labour Court had discussed the evidence of only two RWs. Mr. Sharma also argued that the copy of the inquiry report has been supplied to his client for the first time along with show cause notice. He further contended that the Labour Court had mis-appreciated and misread the evidence led by the parties.

Mr. H.S. Rawat, Advocate appearing on behalf of the employer had supported the award dated 23.10.2006.

I have heard the learned counsel for the parties and perused the record.

To appreciate the first argument made by Mr. Ajay Sharma, Advocate, the entire record of the Labour Court was perused by the Court. The workman had appeared as PW-1 and had also produced two more witnesses, namely, Sh. Lekh Raj and Jagat Ram. Their statements were recorded on 19.4.2004 itself. The statement of RW-1 Sh. Fithoo Ram and Sh. Rajinder Singh were recorded by the Labour Court on 5.4.2005. The order dated 5.4.2005 passed by the Labour Court reads thus:

> **"Statement of 2 summoned witnesses recorded as RW-1 and RW-II. Time prayed for remaining RWs allowed. RW will be produced on self responsibility. To come up on 23.6.2005"**

The statement of RW-3 Sh. Chaman Lal was recorded on 7.11.2005. The order dated 7.11.2005 reads thus:

> **"One RW recorded. Ld. Counsel for respondent has closed his evidence as per his statement recorded separately. Now to come up for arguments on 5.12.2005."**

The Labour Court though had discussed the evidence of PW-1 to 3 in the award, but learned Presiding Judge had observed that the respondents i.e. Management had produced only two RWs i.e. Sh. Fithoo Ram and Shri Rajinder Singh. The Labour Court had discussed the statement of RW-1 and RW-2. The Labour Court had not at all discussed

the statement of RW-3 whose statement was recorded on 7.11.2005. It was necessary for the Labour Court to discuss the entire evidence led by the parties. The non-consideration of the statement of RW-3 by the Labour Court had vitiated the entire proceedings. The award dated 10.3.2006 is liable to be quashed and set aside only on the short ground that the statement of RW-3 has not been discussed by the Labour Court in the award. The Labour Court has committed serious illegality by not considering the statement of RW-3. Since the matter is liable to be remanded back on the short ground of non-consideration of the statement of RW-3, the Court will not go into the other submissions made by Mr. Ajay Sharma, Advocate.

Consequently the writ petition is allowed. The award dated 10.3.2006 is quashed and set aside and the matter is remanded back to the H.P. Labour Court, Shimla with direction to decide the same afresh in accordance with law within a period of three months after the receipt of the copy of this judgment. To avoid the delay, the parties are directed to appear before the H.P. Labour Court, Shimla on 10.11.2007. There shall be no order as to costs.

(Rajiv Sharma), Judge

October 24, 2007
Awasthi